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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,009	10/28/2003	Lee Michael Proctor	CE09094R	4250
22917	7590	10/08/2008		
MOTOROLA, INC. 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			EXAMINER OPSASNICK, MICHAEL N	
			ART UNIT	PAPER NUMBER
			2626	
			NOTIFICATION DATE	DELIVERY MODE
			10/08/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing.US@motorola.com

# Office Action Summary

**Application No.**

10/695,009

**Applicant(s)**

PROCTOR ET AL.

**Examiner**

MICHAEL N. OPSASNICK

**Art Unit**

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 21-29 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-13 and 21-29 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 21-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As per the most recent interpretation of the Interim Guidelines regarding 35 U.S.C. 101, claims 21-29 are non-statutory because this claim is toward a computer program, and as claimed, does not define any structural and functional interrelationship between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized (Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760; Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035). Examiner recommends changing the word "containing" to "storing" in the preamble of claim 21 to overcome the 35 U.S.C. 101 rejection.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-13,21-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Manjunath et al (6584438).

As per claim 1, Manjunath et al (6584438) teaches a method for operating a speech transmission device receiving an indication of a corrupted speech packet and compressing the first speech packet to form a replacement packet (as the subscriber unit is configured to quantize a pitch lag value and a delta value for the current frame, after receiving notification of an erased frame - col. 5 lines 50-56), encoding the current segment of speech and combining the current speech packet with the replacement speech packet to form a combined speech packet and transmitting the combined speech packet (as using the second coder to quantize parameters from the previous and post frame and transmitting these parameters – examiner notes that the transmitted parameters are represent not only the current frame but parameters for the previous- “erased”- frame, and as such, is considered to be a replacement frame – col. 5 lines 60-67; col. 13 line 55 – col. 14 line 15).

As per claims 2,3, Manjunath et al (6584438) teaches encoding at a first and second rate (col. 13 lines 62-67, noting that the second rate can be different from the first rate).

As per claims 4,12,13, Manjunath et al (6584438) teaches determination the speech packet corrupted at a receiver buffer and transmission of erasure info (col. 7 lines 35-54 – the referred to second coder corresponds to the second coder mentioned above, and transmits the new packet back to the decoder after receiving an erasure message).

As per claim 5, Manjunath et al (6584438) teaches determining m number of corrupted packets and determining the rate based upon the first speech packet (col. 14 lines 1-16).

As per claims 6-8, Manjunath et al (6584438) teaches tracking of multiple notifications of erased frames by tracking  $n, n-1, n-2, \dots, n-m$  frames in the memory, and computing appropriate delta values (col. 14 lines 5-47).

As per claims 9,10, Manjunath et al (6584438) teaches stripping of speech parameters from the first packet, generating replacement parameters based upon the previous speech packet and applying the replacement speech parameters (as calculating replacement speech parameters, including pitch – col. 14 lines 5-40), including LSP's (col. 12 lines 60-65).

As per claim 11, Manjunath et al (6584438) teaches transmission and reception of control signals describing the current packet (Fig. 5, subblock 414), as well as coding rate modes (col. 9 lines 5-19).

Claims 21-29 are computer usable medium storing program codes which are designed to contain code that would implement the method claims 1-13 when executed. Claims 21-29 therefore have similar scope and content of claims 1-13 and as such, claims 21-29 are rejected under the similar rationale as presented against the method claims of claims 1-13 as noted above.

***Response to Arguments***

5. Applicant's arguments filed 7/2/08 have been fully considered but they are not persuasive. As per applicants arguments that the claim scope is towards a speech retransmission scheme and that Manjunath is fundamentally different in their approach, examiner disagrees and argues that the current amended claim scope still reads upon the Manjunath reference. The preamble amendment towards "retransmitting a speech packet" does not contain patentable weight since the claim language is not reinforced in the body of the claim. As per the argument towards retransmitting at a second rate, again, examiner disagrees and argues that although applicants disclosure may teach this aspect, the current claim scope does not pertain to retransmitting at a second rate (the claim scope is towards transmission, but the claim scope structure does not clearly define the retransmission process).

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (571)272-7623, who is available Tuesday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richemond Dorvil, can be reached at (571)272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael N. Opsasnick/  
Primary Examiner, Art Unit 2626  
9/30/2008